



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
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### MEMORANDUM

TO: The Honorable Harvey B. Morgan, Chair  
House Agriculture, Chesapeake and Natural Resources

FROM: David K. Paylor *[Signature: DKP]*

DATE: September 25, 2008

SUBJECT: Notification of Proposed State Water Control Board Regulations Concerning  
Water Quality Standards for Bacteria to Protect Recreational Uses of State Waters

### Summary

In accordance with §62.1-44.15.(3a), I am notifying members of the appropriate committees of the Virginia General Assembly that the State Water Control Board is considering two options for freshwater bacteria criteria in the Virginia Water Quality Standards regulation. One option retains the existing criteria while the other would allow for higher, less-stringent criteria. Both are acceptable to the U.S. Environmental Protection Agency, who must approve standards adopted by the states under the Clean Water Act. Some citizens strongly object to the less-stringent criteria and believe the Board should retain the existing criteria. Other citizens and local governments favor the higher criteria and have commented that if the Board retains the existing criteria, it would be an action more restrictive than federal requirements.

Bacteria criteria are used to protect Virginia citizens as they swim and otherwise recreate in the rivers, streams, lakes and bays of the Commonwealth. The options under consideration for bacteria only apply to freshwater rivers, streams and lakes.

### Background

The Clean Water Act requires that states review their water quality standards every three years to ensure they meet public concerns, reflect new scientific and technical information, and follow guidelines developed by the EPA. Water quality standards define the goals for healthy waters by designating their uses, setting water quality conditions that will protect those uses and establishing provisions to safeguard high quality waters. They protect water quality so rivers,

establishing provisions to safeguard high quality waters. They protect water quality so rivers, lakes and other water bodies can be sources of water supplies; support agricultural, industrial and recreational activities among others; promote the growth of fish and shellfish that are suitable for eating; and protect aquatic life.

The water quality standards are the cornerstone for all other water quality programs at the Virginia Department of Environmental Quality. For example, these standards are used to set pollution limits in discharge permits and evaluate the health of waters statewide. If waters do not meet standards, they are considered impaired and a Total Maximum Daily Load, or TMDL, study is done to determine the reductions needed in the sources of the pollutant causing the impairment. The pollution reductions may need to come from point sources, such as wastewater treatment plants, or from non-point sources, such as failing septic systems or runoff from agricultural or urban lands.

The Board adopted the existing bacteria criteria, which became effective in January 2003, at the time when those criteria were EPA's recommendation for protecting recreational uses of the nation's waters. Since that time, EPA has revised its recommendation to include a range of criteria that are considered acceptable, with the existing criteria at the lower end of the range. Since one of the purposes of the triennial review of standards is to consider new information, DEQ included this new information as part of the current regulatory process.

#### **Status of Regulatory Process**

At its June 27, 2007 meeting, the State Water Control Board approved, along with other triennial review changes, two options for bacteria criteria for public comment. Only one value will be adopted into the final regulation. The first value is 126 colony-forming units (CFU) per 100 milliliters of water, which is the existing Virginia standard in freshwater. The second value is 206 CFUs per 100 milliliters of water. Either one provides greater protection than the existing standard for marine beach waters. Though the higher number is less stringent, EPA has determined that it does protect public health as citizens use the freshwater rivers and lakes in the Commonwealth. This option is being evaluated because it would continue to protect public health and also would enable localities and landowners to direct their cleanup funds and efforts to waters where pollution related to human activity is a more significant concern.

The public comment period was March 31 to May 31, 2008, and three public hearings were held in May 2008. At the hearings DEQ staff alerted the public of a new development that occurred after the Board had approved the options for public comments. New information from the EPA indicated that a change in the bacteria standard would allow higher bacteria limits in discharge permits for wastewater treatment plants. While DEQ had originally not taken a position on the options, it never intended that higher discharge limits would result. DEQ indicated that this concern would be shared with the Board when it considers the proposed changes to the water quality standards (expected at its meeting in October 2008).

Written comments on the triennial review changes were received from 34 organizations, localities and agencies, and 8 letters and approximately 600 emails from individuals. The issue that attracted the most comment was the bacteria options, with all of the 8 individual letters and 600 emails opposing the option of the higher criteria. Of the organizations, localities and agencies commenting on the bacteria criteria, four also opposed the higher criteria, and 20

supported the higher criteria. Opponents are concerned that the higher criteria would result in additional gastrointestinal illnesses among the public recreating in Virginia waters.

A particular comment package is worth noting. The City of Richmond submitted comments that recommend the Board adopt the higher criteria for a segment of the James River below the City if the Board decides not to adopt the higher criteria for all Virginia freshwaters. The City indicates that the Long Term Control Plan for their Combined Sewer System cannot meet the existing lower criteria, but can achieve the higher criteria. To date, a total of \$242 million in local, state and federal funds has been invested in implementing the Plan, with another \$400 million investment needed to complete implementation of the Plan.

Specific information regarding these regulatory proposals and specific public comment may be found under the Triennial Review section on DEQ's web site at this address  
<http://www.deq.virginia.gov/wqs/rule.html>.

#### **Notification of General Assembly**

Section 62.1-44.15.(3a) of the Code of Virginia requires DEQ to notify the General Assembly committees when the agency is proposing regulations more stringent than federal requirements. EPA allows states to select bacteria criteria within a range of values that is protective of public health and some citizens view retaining the existing criteria at the lower end of the range to be more stringent than federal requirements. Therefore, even though there may be some debate whether adopting criteria within the acceptable range is more stringent than federal requirements, the agency is notifying the General Assembly in order to ensure the intent of the Code of Virginia is met.

If you have any questions about this proposal, do not hesitate to contact me.



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